

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

CROSS RIVER BANK, d/b/a LEAD SOURCE,

Plaintiff,

v.

FIRST DATA MERCHANT SERVICES LLC,

Defendant.

Civil Action No. _____

NOTICE OF REMOVAL

PLEASE TAKE NOTICE that Defendant First Data Merchant Services LLC (“First Data” or “Defendant”), by and through its undersigned counsel, hereby removes this civil action pending in the Supreme Court of the State of New York, County of Suffolk, Index No. 625195/2023, to the United States District Court for the Eastern District of New York (Central Islip Division), pursuant to 28 U.S.C. §§ 1332, 1441 and 1446. The grounds for removal are set forth below.

NATURE OF THE ACTION

1. Plaintiff Cross River Bank, d/b/a Lead Source (“Plaintiff”) filed a Summons and Complaint in this action, captioned *Cross River Bank, d/b/a Lead Source v. First Data Merchant Services LLC*, Index No. 625195/2023, in the Supreme Court of the State of New York, County of Suffolk on October 11, 2023. First Data received a copy of the Summons and Complaint by email on October 12, 2023, and Plaintiff served the Summons and Complaint through First Data’s registered agent on the same day.

2. Pursuant to 28 U.S.C. § 1446(a), a copy of the Summons and Complaint filed in this action is attached as **Exhibit A**. A copy of Plaintiff’s Affidavit of Service is attached as

Exhibit B. The foregoing comprises all process, pleadings, papers and orders, if any, now on file with the state court.

3. In the Complaint, Plaintiff asserts two claims against Defendant, one for declaratory judgment and one for breach of contract.

DIVERSITY JURISDICTION EXISTS IN THIS ACTION

4. As set forth below, removal to this Court is proper because Plaintiff's citizenship is diverse from Defendant's and the amount in controversy exceeds \$75,000.

5. Except as otherwise expressly provided by Act of Congress, a civil action commenced in state court may be removed to the federal district court embracing the place where such action is pending provided that the district court has original jurisdiction over the action and the notice of removal is timely filed. 28 U.S.C. §§ 1441(a), 1446.

6. A district court has original jurisdiction over all civil actions where the amount in controversy exceeds \$75,000 and the claims are between "citizens of different States and in which citizens or subjects of a foreign state are additional parties." 28 U.S.C. § 1332(a)(3).

7. A corporation is a citizen of the state or country where it is incorporated and of the state or country where its principal place of business is located. *Hertz Corp v. Friend*, 559 U.S. 77 (2010). A corporation's principal place of business is the location from which "high level officers direct, control and coordinate the corporation's activities." *Id.*

8. Plaintiff Cross River is incorporated in New Jersey with its principal place of business in Fort Lee, New Jersey. *See* Compl. ¶ 24. Plaintiff is, therefore, a citizen of New Jersey.

9. The citizenship of an LLC consists of the imputed citizenship of each one of its members. *Bayerische Landesbank, New York Branch v. Aladdin Capital Mgt. LLC*, 692 F.3d 42, 49 (2d Cir. 2012).

10. First Data is a Florida limited liability company with its principal place of business in Alpharetta, Georgia. *See* <https://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=FIRSTDATAMERCHANTSERVICES%20L150002134810&aggregateId=flal-115000213481-88a3a0ac-6616-4556-9eda-3b25a57fa9b7&searchTerm=first%20data%20merchant%20services&listNameOrder=FIRSTDATAMERCHANTSERVICES%206965352>.

11. First Data's sole member, First Data Corporation, is a Delaware corporation, with a principal place of business in Brookfield, Wisconsin. *See* <https://icis.corp.delaware.gov/ecorp/entitysearch/NameSearch.aspx> and <https://ecorp.sos.ga.gov/BusinessSearch/BusinessInformation?businessId=996392&businessType=Foreign%20Profit%20Corporation&fromSearch=True>

12. Thus, First Data Corporation is a citizen of Delaware and Wisconsin and, consequently, First Data also is a citizen of Delaware and Wisconsin.

13. Plaintiff is a citizen of New Jersey, and Defendant is a citizen of Delaware and Wisconsin. Therefore, the parties are completely diverse under 28 U.S.C. § 1332(a).

14. The jurisdictional amount also is satisfied because the amount in controversy exceeds the sum of \$75,000, exclusive of interest and costs. 28 U.S.C. § 1332(a). Specifically, Plaintiff seeks damages in excess of \$4,000,000.

15. As the foregoing reflects, this action originally could have been filed in this Court pursuant to 28 U.S.C. § 1332 in that it is a civil action involving claims well in excess of \$75,000 and is between citizens of different states.¹

¹ Further, the contractual agreement between the parties giving rise to Plaintiff's Complaint specifies "[t]he courts in or for Suffolk County, New York are proper venue for legal actions arising under this Agreement."

16. Pursuant to 28 U.S.C. § 1446(d), written notice of the filing of this Notice of Removal promptly will be filed with the Clerk of the Supreme Court of New York, County of Suffolk and served on Plaintiff's counsel of record.

17. The undersigned is counsel for Defendant and is duly authorized to effect removal on its behalf.

18. In filing this Notice of Removal, Defendant does not waive, and expressly reserves, any defenses that may be available to it, including personal jurisdiction defenses.

WHEREFORE, the undersigned counsel for Defendant submits that this action is now properly removed from the Supreme Court of the State of New York, County of Suffolk, and is properly before this District Court.

Dated: November 10, 2023

By: /s/ Anne B. Sekel
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